Goh Yong Peow v Goh Sok Choo & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S-25-18 OF 2010
SU GEOK YIAM J
23 OCTOBER 2014

Civil Procedure — Discovery — Application for order for discovery, production and inspection of documents — Whether application necessary to dispose fairly of cause or matter and to save costs — Whether discovery would result in full disclosure of assets belonging to estates of mentally incapacitated parents enabling court to appoint suitable committee under s 58 of the Mental Health Act 2001 to manage their estates

The plaintiff and the defendants were children of Goh Swee Hon ('GSH') and his wife, Lim Beng Kim ('LBK') who had become mentally incapacitated and were unable to manage their affairs. Both GSH and LBK resided in Australia with the second defendant. The plaintiff, on the one hand, and the defendants, on the other, had differences of opinion over how their parents should be cared for and how their assets should be managed. In the instant suit, the plaintiff sought, inter alia, an order that a committee pursuant to s 58 of the Mental Health Act 2001 ('the Act') be set up to manage the estates of GSH and LBK. The defendants were agreeable to the formation of such a committee but the parties were at odds over who should comprise its membership. The first defendant, as the eldest of the siblings, had managed the assets and financial affairs of GSH and LBK in Malaysia and was in possession, custody and/or power of various documents concerning her parents' affairs. Except for the first and fourth defendants, who were resident in Malaysia, the other defendants and the plaintiff were resident in Australia. Stemming from various allegations the plaintiff made particularly against the first defendant in her management of the estate of GSH, the plaintiff in the instant application, pursuant to O 24 r 3 of the Rules of Court 2012, sought an order against her for discovery, production and inspection of the bank statements from various banks in which GSH had maintained accounts for the period between January 2008 and December 2013 as well as statements of GSH's account with the Malaysian Stock Exchange. The plaintiff contended that the discovery of the documents was necessary to enable him to complete his cross-examination of the first defendant concerning the nature, amount and value of all assets comprised in the estates of his parents in Malaysia which evidence would put the court in an informed position to make the necessary order for the appointment of a s 58 committee and decide upon its membership and other related matters. The first defendant resisted the application saying, inter alia, that there was no necessity for it as the object of the suit was to have a suitable committee appointed to manage the estates and affairs of their parents.

Held, allowing the application:

(1) There had to be full disclosure of all the documents relating to the assets and accounts in Malaysia of the estates of GSH and LBK to enable the plaintiff to complete his cross-examination of the first defendant on those matters and also to enable the court to decide whether a committee pursuant to s 58 of the Mental Health Act 2001 should be appointed and to decide who should be appointed to the committee to manage the Malaysian estates of GSH and LBK. The discovery of the documents sought by the plaintiff was necessary to shed light on the nature, amount and value of all existing assets of GSH and LBK in Malaysia and to dispose fairly of the cause or matter and to save costs (see paras 130–131 & 142).

(2) The disclosure would also assist the court to decide whether the court should appoint such person or persons it deemed fit to either transfer the Malaysian assets of GSH and LBK—or to sell those assets and forward the proceeds of sale thereof—to the public trustee in Queensland, Australia, for payment to the second defendant or any other person, including the plaintiff, or trustee or committee of the estate of GSH and LBK in Australia for the welfare and upkeep of GSH and LBK in Australia (see para 143).

(3) If the first defendant failed to comply with the order for discovery and inspection of the documents, the court had power under O 24 r 16(1) of the Rules of Court 2012 to strike out the amended defence and counterclaim of the first defendant and enter judgment against her in favour of the plaintiff (see para 148).

[Bahasa Malaysia summary

Beng Kim ('LBK') yang menjadi orang kurang upaya mental dan tidak dapat menguruskan hal ehwal mereka. Kedua-dua GSH dan LBK tinggal di Australia dengan defendan kedua. Plaintif, sebelah pihak, dan defendan-defendan, di pihak yang lain, mempunyai pandangan yang berbeza bagaimana ibubapa mereka patut dijaga dan bagaimana aset-aset mereka patut diuruskan. Dalam guaman ini, plaintif memohon, antara lain, perintah bahawa jawatankuasa berikutan s 58 Akta Kesihatan Mental 2001 ('Akta') ditubuhkan untuk menguruskan estet-estet GSH dan LBK. Defendan-defendan bersetuju kepada pembentukan jawatankuasa sedemikian tetapi pihak-pihak adalah tidak pasti mengenai siapa yang patut menjadi ahlinya. Defendan pertama, sebagai anak pertama daripada adik-beradik tersebut, telah menguruskan hal ehwal aset dan kewangan GSH dan LBK di Malaysia dan dalam milikan, kawalan dan/atau kuasa terhadap pelbagai dokumen berkenaan hal ehwal ibubapanya. Kecuali untuk defendan pertama dan keempat, yang tinggal di Malaysia, defendan-defendan lain dan plaintif tinggal di Australia. Berpunca daripada pelbagai tuduhan yang plaintif buat terutamanya terhadap defendan pertama

dalam pengurusan estet GSHnya, plaintif dalam permohonan ini, berikutan A 24 k 3 Kaedah-Kaedah Mahkamah 2012, memohon perintah terhadap penemuan, penghasilan dan pemeriksaan penyata bank daripada pelbagai bank di mana GSH telah mengekalkan akaun untuk tempoh di antara Januari 2008 dan Disember 2013 dan juga penyata akaun GSH dengan Bursa Saham Malaysia. Plaintif berhujah bahawa penemuan dokumen-dokumen adalah perlu untuk membolehkan dia menyelesaikan pemeriksaan balas terhadap defendan pertama berkenaan sifat, jumlah dan nilai kesemua aset-aset yang terdapat dalam estet-estet ibubapanya di Malaysia keterangan yang mana akan meletakkan mahkamah dalam kedudukan yang diberitahu untuk membuat perintah yang perlu untuk perlantikan jawatankuasa s 58 dan memutuskan ke atas keahliannya dan perkara berkaitan yang lain. Defendan pertama menolak permohonan tersebut dengan menyatakan, antara lain, bahawa tidak perlu untuknya sebagai objek guaman untuk mempunyai ahli jawatankuasa yang sesuai dilantik untuk menguruskan estet-estet tersebut dan hal ehwal ibubapa mereka.

Diputuskan, membenarkan permohonan:

(1) Mesti terdapat pendedahan yang penuh terhadap kesemua dokumen-dokumen berkaitan aset-aset dan akuan di Malaysia terhadap estet-estet GSH dan LBK untuk membolehkan plaintif untuk menyelesaikan pemeriksaan balasnya terhadap defendan pertama ke atas perkara tersebut dan juga untuk membolehkan mahkamah untuk memutuskan sama ada jawatankuasa berikutan s 58 Akta patut dilantik dan untuk memutuskan siapa yang patut dilantik kepada jawatankuasa untuk menguruskan estet-estet GSH dan LBK di Malaysia. Penemuan dokumen yang dipohon oleh plaintif adalah perlu untuk memberi keterangan atas sifat, jumlah dan nilai kesemua aset GSH dan LBK di Malaysia dan untuk melepaskan secara adil terhadap kausa atau perkara dan untuk menjimatkan kos (lihat perenggan 130–131 dan 142).

(2) Penemuan juga akan membantu mahkamah untuk memutuskan sama ada mahkamah patut melantik orang sedemikian atau orang-orang yang difikirkan sesuai untuk sama ada memindahkan aset-aset Malaysia GSH dan LBK—atau untuk menjual aset-aset tersebut dan memberikan hasil jualan daripadanya—kepada pemegang amanah awam di Queensland, Australia, untuk bayaran kepada defendan kedua atau mana-mana orang, termasuk plaintif, ayau pemegang amanah atau jawatankuasa estet GSH dan LBK di Australia untuk kebajikan dan penjagaan GSH dan LBK di Australia (lihat perenggan 143).

(3) Jika defendan gagal untuk mematuhi dengan perintah untuk penemuan dan pemeriksaan dokumen-dokumen, mahkamah mempunyai kuasa di bawah A 24 k 16(1) Kaedah-Kaedah Mahkamah 2012 untuk membatalkan pembelaan yang dipinda dan tuntutan balas defendan

pertama dan memasukkan penghakiman terhadapnya dengan memihak kepada plaintif (lihat perenggan 148).]]]]]]

Notes

For cases on application for, see 2(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 2956–2985

Legislation referred to

Mental Health Act 2001 ss 2, 51, 52, (1), (2), (3) s 53 (1), (2), 54 (1), (2), (3), 55 (1), (2), (3), (4), (5), (6), 56, 57, 58, (1), (2), 59 (1), (2), 69, 70, 71, 73, Part X

Rules of Court 2012 O 24, rr 3, (4), 6, 8, 8A, 10 Form 41, (1), 11, (1), (1)(b), Form 43, 13, (1), (2), 16 16 (1)

Philip Chai (Philip Chai & Co) for the plaintiff.
Syahredzan Johan (RamRais & Partners) for the defendants.

Su Geok Yiam J:

THE PLAINTIFF'S APPLICATION

[1] This is an application vide a notice of application, encl (80), filed by the plaintiff against the first defendant, namely, Ms Goh Sok Choo ('the first defendant'), for an order from the court for the discovery and inspection of documents pertaining to the estate of Mr Goh Swee Hon ('Mr GSH') and the estate of Mdm Lim Beng Kim ('Mdm LBK').

[2] The plaintiff has made this application for discovery of documents pursuant to O 24 r 3 of the Rules of Court 2012 ('the RC 2012') and for production and inspection of documents pursuant to O 24 r 11 of the Rules of Court 2012. In the event that his application is granted, the plaintiff prays for the costs of his application to be in the cause.

[3] The plaintiff's application is supported by the affidavit affirmed by his solicitor and counsel, Mr Philip Chai, on 01 July 2014 ('the plaintiff's affidavit').

[4] According to Mr Philip Chai, he was directed by the plaintiff vide a letter dated 28 June 2014 to obtain the said documents from the first defendant through her solicitors, Messrs RamRais & Partners. He acted upon his client's instructions and duly sent a letter dated 12 June 2014 to Messrs RamRais & Partners to request for inspection of the documents. Together with his letter he also enclosed a notice to the first defendant to produce the said documents pursuant to O 24 r 10 of the Rules of Court 2012.

[5] In his letter he had also put the first defendant on notice to allow him to inspect the said documents within seven days from the date of the letter, failing which he has his client's instructions to apply to the court for orders for production to and inspection by the plaintiff. However, as on 1 July 2014, the first defendant has failed to produce the documents for the plaintiff's inspection.

[6] Hence, on 1 July 2014, the plaintiff filed his application in encl (80). The ground of the plaintiff's application is that the documents the production and inspection of which are being sought by him in encl (80), are in the possession, custody and/or power of the first defendant. This is because the first defendant is the person who is managing the assets and financial affairs of Mr GSH and Mdm LBK in Malaysia and that other than the documents which have been alleged by the first defendant to have been redirected to the plaintiffs address in Australia, all letters, documents and correspondences and statements of accounts in relation to the assets of Mr GSH and Mdm LBK in Malaysia are sent to their address and the first defendant's address at No 12, Jalan Kovil Hilir, Sentul 55100 Kuala Lumpur.

[7] With regard to his prayer for discovery of documents, the plaintiff is seeking an order from the court that the first defendant serves on the plaintiff within fourteen days from the date of the order of the court a list of all the documents in or previously in the possession, custody and/or power of the first defendant relating to all the assets of the estate of Mr GSH and the estate of Mdm LBK in Malaysia since 2008 until the date of the order of the court.

[8] The plaintiff is also seeking an order of the court that within fourteen days from the date of the order of the court, the first defendant serves on the plaintiff an affidavit verifying the list of documents together with the list of documents.

[9] With regard to his prayer for production and inspection of documents as contained in para 2 (a) of his notice of application, the plaintiff is seeking an order of the court that upon reasonable notice being given by his solicitors to the first defendant, the first defendant produces in the office of the plaintiff's solicitors, the following documents and the plaintiff be given liberty to inspect and make notes of the contents thereof and to be supplied with copies thereof, subject to the payment of the necessary charges:

(a) all statements of Bursa Saham of Mr GSH's Account No 073 001 041408378;

(b) all statements from Kenanga Investment Bank for the client's account of Mr GSH No 3G01470 from January 2008 until December 2013;

(c) all bank statements from the OCBC Bank (M) Sdn Bhd of the joint

accounts of Mr GSH, Ms Goh Sok Choo and Mr Goh Yong Peow, Account No 7011267736 from January 2008 until December 2013;

(d) all bank statements from OCBC Bank (M) Sdn Bhd of the joint accounts of Mr GSH, Ms Goh Sok Choo and Mr Goh Yong Peow, Account No 7013241165 from January 2008 until December 2013;

(e) all bank statements from OCBC Bank (M) Sdn Bhd of the joint accounts of Mr GSH, Ms Goh Sok Choo and Mr Goh Yong Peow, Account No 7015027012 from January 2008 until December 2013;

(f) all bank statements from OCBC Bank (M) Sdn Bhd of the joint accounts of Mr GSH, Ms Goh Sok Choo and Mr Goh Yong Peow, Account No 7015005582 from January 2008 until December 2013; and

(g) all bank statements from the 'active bank accounts' which have not been suspended by the plaintiff from the funds are being used for the daily expenses of Mr GSH from 2008 until the date of the order.

[10] The plaintiff's application is resisted by the first defendant who has affirmed an affidavit in reply on 08 July 2014 in order to oppose it ('the first defendant's affidavit').

[11] Insofar as the specified documents which are enumerated in sub-paras (a) to (g) in para 2 (a) of the plaintiff's notice of application are concerned, the plaintiff confirms that only the latest bank statements have been received by him from the first defendant.

[12] According to the plaintiff, the first defendant has failed to disclose any statements of accounts in relation to any 'active bank accounts' which have not been suspended and from which the funds have been and are being used for the daily expenses of Mr GSH.

THE PLAINTIFFS ACTION AGAINST THE DEFENDANTS

[13] The plaintiff's action against the defendants, as pleaded in the plaintiff's amended statement of claim ('Amended SOC') and his amended reply to the defendants' amended defence and amended counterclaim, is for the setting up of a committee pursuant to s 58 of the Mental Health Act 2001 to manage the assets which comprise the estates of Mr GSH and Mdm LBK, subject to the set of ground rules which he has attached to his amended SOC.

[14] The plaintiff wishes that Mr GSH and Mdm LBK be brought back to Malaysia to be cared for by the first defendant and the fourth defendant in the house in Sentul in which the first defendant currently resides in and which belongs to Mr GSH and Mdm LBK ('the Sentul house'). A

[15] The plaintiff relies on the following grounds: B

[16] Firstly, both his parents have been certified by their respective doctors to be suffering from dementia. Hence, they are mentally disabled and are, therefore, incapable of looking after their welfare, affairs and assets. C

[17] Secondly, serious disputes have arisen between the plaintiff and the defendants resulting in there being two camps among the siblings ie the plaintiff in one camp and the four defendants in the other camp. The four defendants have refused to work together with him to manage the assets which comprise the estates of Mr GSH and Mdm LBK. D

[18] Thirdly, it is the plaintiff's wish to see that the assets of Mr GSH and Mdm LBK in Malaysia ('the Malaysian Estate') are properly managed in order to ensure that there are sufficient funds for their maintenance and upkeep until they live out the rest of their natural lives. This is because their assets in Australia ('the Australian Estate') have already been fully expended in their care and upkeep. E

[19] The plaintiff has proposed that the court appoint a committee which comprises only the sons of Mr GSH and Mdm LBK and an arbitrator appointed by the court or a committee which comprises the plaintiff and the four defendants but subject to the ground rules drawn up by him in order to regulate its duties, functions and powers. F G

[20] The plaintiff avers as follows:

[21] At all material times prior to Mr GSH becoming mentally disabled and until he returned to Malaysia in 2007 with Mdm LBK, they were staying with the plaintiff and his family in Australia in New South Wales. The plaintiff and his family took good care of Mr GSH and Mdm LBK in Australia during Mr GSH's good health to the onset of his dementia. H

[22] The plaintiff took Mr GSH to seek medical consultation for his health. The plaintiff was ready, willing and able to continue looking after Mr GSH even after his mental health had declined. However, after Mr GSH returned to Malaysia at the end of 2007, the defendants refused to allow him to return to I

A the care of the plaintiff in Australia and even after they returned Mr GSH to live in Australia, the defendants deliberately did not inform the plaintiff of this fact.

B **[23]** The defendants intentionally, maliciously and cruelly took steps to keep Mr GSH hidden from the plaintiff and to ensure that at all times there was a distance between the plaintiff and Mr GSH.

C **[24]** The plaintiff has proposed that provisions can also be made from the estate of GSH to look after his mother, Mdm LBK.

[25] The plaintiff has alleged that the defendants have unreasonably and willfully removed him from the family home and have taken deliberate and intentional steps in an attempt to get rid of the plaintiff for the following
D reasons:

(a) the plaintiff avers that at all material times when Mr GSH is of good mental health, Mr GSH had worked together very closely with the plaintiff to manage the accounts of the family and Mr GSH had on
E many occasions requested the plaintiff to carry out audits to ensure that his wife and children did not mismanage the family funds;

(b) Mr GSH had expressed his wish that the plaintiff should manage his estate together with the first defendant as is evident from several legal documents executed by Mr GSH before he became mentally disabled;
F and

(c) the plaintiff has alleged that the defendants having hijacked the management of Mr GSH's estate in Australia have shown that they are either completely incapable of managing the affairs of his estate and/or
G are motivated by personal desires which lead to a conflict of interest situation.

[26] The plaintiff has alleged that the defendants have not been transparent in the management of the funds of Mr GSH's estate in Australia.
H

[27] The plaintiff, therefore, holds the view that the defendants are not able to manage the Malaysian estate of Mr GSH in a trustworthy and regulated manner and if left unchecked, the defendants will soon deplete the Malaysian
I estate of Mr GSH to the point where there will be insufficient funds to provide for his welfare and medical care.

[28] The plaintiff has alleged as follows against the defendants:

[29] The defendants who had forcefully decided to look after the welfare of Mr GSH in Australia since his return to Australia in 2009 have carried out the management of the welfare of Mr GSH and the management of the estate of Mr GSH in a manner which is totally detrimental to it, resulting in unreasonable depletion of funds caused by unjust personal enrichment from purporting to look after Mr GSH.

[30] The defendants without care or concern for the welfare of Mr GSH made 'financial distributions' from the estate of Mr GSH to each other and to Mdm LBK.

[31] The plaintiff has also alleged that the first defendant is unsuitable to be appointed as a member of the committee on the following grounds:

(a) the first defendant transferred sums of money in 2007 when Mr GSH was already mentally disabled from the sole account of Mr GSH's (JOB account in Singapore to a joint account of Mr GSH and the first defendant when at the time Mr GSH had no capacity to carry out any legal transactions;

(b) the first defendant sold a substantial amount of public quoted shares held under the account of Mr GSH with Kenanga Investment Bank Bhd where the first defendant is carrying on business as a remisier but despite numerous requests, demands and reminders until 12 April 2013, the first defendant refuses to inform the plaintiff the amount of the proceeds of the sale of the shares, how much has been utilised and for what purpose and where the proceeds or balance have been deposited and the details of such accounts;

(c) the first defendant has a history of not being honest, frank and candid based on the plaintiff's and the first defendant's attempts to work as co-guardians and attorneys for Mr GSH in Australia;

(d) the first defendant has failed to discharge her duties as the co-enduring guardian and attorney as can be seen from a complete failure by the first defendant to take any appropriate action or make any queries to the Public Trustee, Queensland who has been paying substantial but unreasonable amounts to the second defendant for the care and welfare of Mr GSH and Mdm LBK in Australia;

(e) since the date the Guardianship Tribunal, Queensland, Australia, made the order appointing the public trustee as administrator of Mr GSH's estate on 30 November 2009, the public trustee has been paying to the second defendant substantial sums of AUD$ 1, 980 per week to cover rent, groceries, living expenses, gas, electricity, vehicle expenses and private care fees resulting in a total depletion of all of Mr GSH's cash of approximately AUD$ 180,000 within a period of eighteen months or so

resulting in there being no more money left in Mr GSH's estate in Australia as at 12 April 2013 (the date of the plaintiff's reply);

(f) the first defendant is not able to work with him and the rest of the defendants as a team based on her conduct from 2007 until 12 April 2013, in particular, the many instances when the first defendant will do what she wishes without discussion or consultation with the other family members including the following instances:

(i) the unilateral action by her to discontinue the service of Mr GSH's auditor without regard to the objections of the plaintiff;

(ii) the transfer of S$ 200,000 from Mr GSH's UOB account in Singapore; and

(iii) refusing to work together to set up a committee to administer Mr GSH's welfare and his estate.

(g) the first defendant tends to get emotionally affected easily thereby impairing her decision-making ability resulting in she often jumping to hasty conclusions and making rapid decisions without considering the issues in sufficient detail;

(h) a lot of the issues leading to the plaintiff's present estranged relationship with the first defendant was caused especially because of her uncompromising conduct and a personal belief that as she is the eldest in the family, she is entitled to make decisions concerning the financial affairs of Mr GSH's estate without concern for the others or without informing any other person in the family;

(i) the first defendant has a tendency to push blame onto the other parties;

(j) the first defendant has a tendency to instigate and tell untruths to the other members of the family; and

(k) the first defendant has acted in an inappropriate manner which raises a serious question as to her credibility when she did the following acts:

(i) forged the plaintiff's signature on three OCBC cheques on or about April and May 2007 to obtain funds from the joint account held by the plaintiff, the first defendant and Mr GSH without obtaining prior authorisation from the plaintiff;

(ii) blatantly, refusing to give the plaintiff any information relating to the share transactions which were carried out without authorisation and failing to provide the plaintiff with information as to the proceeds of sale of the shares;

(iii) secretly and without informing the plaintiff, opening a 'hidden account' of which despite numerous requests and reminders she refuses to provide details to the plaintiff; and

(iv) was insistent in wanting to distribute Mr GSH's property even though their father is still alive.

[32] The plaintiff has also alleged that the second defendant is unsuitable to be appointed to the committee on the following grounds:

(a) the second defendant has an unsettled career history and is not able to manage her own affairs leading to her having to deal with a debt situation;

(b) since their parents have been residing in Australia with the second defendant and in her care, she has been charging the estate of Mr GSH in Australia for many items such as food, lodging, utilities, etc, which is not reasonably expected of a daughter and this has put her in a conflict of interest position vis a vis the estate of Mr GSH; and

(c) the second defendant has shown an intention to withdraw large sums of money from the estate of GSH for her personal use and benefit.

[33] The plaintiff has denied the defendants' allegations that he is untruthful, irrational, etc, and also the defendants' allegations of impropriety on his part concerning the use of the power of attorney obtained by him in Australia and the transfer of funds from the bank account of Mr GSH to a bank account in his name and the name of Mr GSH.

The defendants' amended statement of defence ('amended defence') and amended counterclaim

[34] The four defendants have no objection to the plaintiff's application to the court to appoint a committee to manage the affairs and the assets of their parents and they support the plaintiff's application.

[35] However, the defendants do not wish to have the plaintiff appointed to the committee because he cannot work together with any of the defendants and they in turn would not be able to work with him. Hence, his presence in the committee will be detrimental to the interests of their parents.

[36] The defendants wish that only the first, second and fourth defendants be appointed to the committee to manage the affairs and estates of their parents.

[37] The defendants are not agreeable to the set of ground rules proposed by the plaintiff as they hold the view that these are unworkable and would not be effective as they allow the plaintiff an opportunity for significant input in the management of their parents' estates without the responsibility to take care of

them. Furthermore, the ground rules suggest a budget for only one and not two persons without factoring in the fact that Mr GSH's wife also needs care and the plaintiff only wishes to look after the financial matters of Mr GSH and Mdm LBK from Australia while Mr GSH and his wife are being taken care of in Malaysia by the first defendant and the fourth defendant.

[38] The defendants also do not wish to have an outsider appointed to the committee as the management of the welfare and estates of Mr GSH and his wife should rightly be a private matter between their family members. This is because outsiders would not understand the complexities of the relationships between the individuals involved.

[39] Apart from that, the appointment of an outsider as a member of the committee will also incur additional costs and this will cause a drain on the available funds for the upkeep of Mr GSH and his wife.

[40] In para 7 of their amended defence, the defendants have alleged that the plaintiff is unsuitable to be appointed as a member of the committee because of the following grounds:

> 7.3 The plaintiff acted without informing or consulting the defendants in several matters, the particulars of which are as follows:
>
> (i) the plaintiff declared Mr GSH as mentally incapable in December 2006.
>
> (ii) the plaintiff caused monies to be transferred from the joint account (of Mr) GSH and the first defendant in November 2007.
>
> (iii) The plaintiff caused the closure of the joint account in the name of (Mr) GSH and the first defendant and caused the transfer of the balance funds to a new joint account in the name of (Mr) GSH and the plaintiff in December 2007.
>
> (iv) The plaintiff redeemed the unit trusts in Singapore belonging to (Mr) GSH in December 2007.
>
> (v) The plaintiff updated the correspondence address with financial institutions from Sentul, Malaysia to the plaintifff's own house address in Australia,
>
> (vi) The plaintiff caused to be changed the account for direct credit at the Singaporean stock exchange from the joint account in the name of (Mr) GSH and the first defendant to the account in the name of (Mr) GSH and ultimately resulting in the dividend cheques (being) sent to the plaintiff's address in Australia,
>
> (vii) The plaintiff attempted to get (Mr) GSH (to) resume golfing practices at Kelab Golf Angkatan Tentera despite the uneven terrain being unsuitable for GSH.

7.4 ... the plaintiff abused a power of attorney obtained in Australia in (a) jurisdiction outside of the ambit of the said power of attorney.

7.5 ... the plaintiff abused the same power of attorney with (the) knowledge that it has already been suspended and later set aside. An order was made by the Queensland Civil and Administrative Tribunal suspending the powers in the power of attorney since 27 October 2009 and setting aside from 16 April 2010. The powers were subsequently revoked on 17 November 2011 due to the plaintiff defying and ignoring the repayment orders of the Public Trustee of Queensland involving the Singapore dividend cheques held by him in Australia.

7.6 ... the plaintiff had neglected (Mr) GSH and his wife by not giving adequate care and supervision during their stay with the plaintiff and his family.

7.7 ... the plaintiff is irrational, untruthful and acts with complete disregard and in utter defiance of the defendants and the interest of (Mr) GSH.

[41] In para 13 of their amended counterclaim, the defendants are also seeking an order from the court for, inter alia, the following upon the setting up of the committee by an order of the court:

(a) the committee be required to prepare periodic reports on the financial affairs and the personal wellbeing of their parents and to distribute these reports to the plaintiff and defendants;

(b) the committee be empowered to engage with experts from any discipline, if necessary, and the remuneration of these experts be charged to their parents' estates;

(c) the committee be empowered to order a full accounting of the status of the assets held or controlled by any persons including the plaintiff and to refund monies held by these persons derived from the assets in Malaysia to be placed in a trust account;

(d) the plaintiff be required to fully cooperate and facilitate in the opening, closing and the transferring of funds from the old accounts to the new accounts and in restoring the share mandate to the committee;

(e) in the alternative to (3) above, the full accounting of the status of the assets held or controlled by any persons including the plaintiff and to refund monies held by these persons derived from the assets in Malaysia to be placed in a trust account;

(f) the costs of these proceedings and the setting up of the committee to be borne by the plaintiff; and

(g) such other and further reliefs which the court deems fit.

The defendants' amended reply to the plaintiff's amended reply to the defendants' amended defence and plaintiff's amended defence to the defendants' amended counterclaim and the defendants' amended reply to the plaintiff's amended defence to the defendants' amended counterclaim

[42] The first defendant avers that she has proven herself to be an astute decision maker in carrying out her responsibilities for Mr GSH.

[43] The first defendant has admitted that she had terminated Mr GSH's auditor.

[44] The first defendant avers that the transfer of funds was done by her in accordance with the mandate given by Mr GSH.

[45] The first defendant has also admitted that she had created the hidden account and that she has denied the plaintiff access to it to ensure that the plaintiff does not cause it to be frozen.

[46] The first defendant avers that she has made the necessary queries regarding the expenditure of the Public Trustee for the care and welfare of Mr GSH and Mdm LBK in Australia but there is little that she can do as the Public Trustee has the necessary power to decide on the expenditure for the care and welfare of Mr GSH and Mdm LBK in Australia and hence, the first defendant cannot be held responsible for the Public Trustee's spending of the Australian funds belonging to Mr GSH in Australia.

[47] The defendants aver that any expenses incurred by the second defendant are legitimate expenses for the care of Mr GSH and Mdm LBK in Australia.

[48] The defendants deny the plaintiff's allegations against the second defendant and aver that the reasons relied upon by the plaintiff to exclude the second defendant from the composition of the committee to be set up for the care of Mr GSH and Mdm LBK in Australia are not cogent enough.

[49] The plaintiff is estopped from attempting to exclude the first defendant as a member of the committee since he has applied to the court to appoint himself, the first defendant and the second defendant as the members of the committee.

[50] The first defendant has denied the rest of the plaintiff's allegations against her in his amended reply.

[51] The defendants aver that the plaintiff does not have a defence with merits to the defendant's counterclaim and they pray that their counterclaim be allowed with costs.

BACKGROUND

[52] The plaintiff and the four defendants are the children of Mr GSH and Mdm LBK.

[53] The first defendant is the eldest of the five siblings. She resides in the Sentul house in Malaysia.

[54] The second defendant, namely, Ms Goh Sock Suan ('the second defendant'), is the second of the five siblings. She resides in Australia. Mr GSH and Mdm LBK reside with the second defendant in Australia.

[55] The third defendant, namely, Mr Goh Hock Peow ('the third defendant'), is the third of the five siblings. He resides in Australia with his wife and children.

[56] The plaintiff, namely, Mr Goh Yong Peow ('the plaintiff'), is the fourth of the five siblings. He resides in Australia with his wife and children.

[57] The fourth defendant, namely, Mr Goh Leng Peow ('the fourth defendant') is the youngest of the five siblings. He resides in Malaysia with his wife.

[58] The plaintiff's parents are suffering from dementia and are incapable of looking after themselves, their affairs and assets in Malaysia.

ISSUES FOR THE DETERMINATION OF THE COURT

[59] In this case, the parties have framed two issues for the determination of the court.

[60] The two issues are as follows in the Malay language:

(1) 'Siapakah yang akan dilantik sebagai ahli-ahli dalam jawatankuasa yang akan ditubuhkan menurut seksyen 58 Akta Kesihatan Mental 2001 untuk menguruskan Estet Goh Swee Hon dan Estet Lim Beng Kim?

(2) Apakah terma-terma dan syarat-syarat yang akan mengawal penubuhan dan operasi jawatankuasa tersebut?'

THE PLAINTIFF'S SUBMISSIONS

[61] In praying for order in terms of his application for discovery and inspection of documents, encl (80), the plaintiff submitted as follows:

(a) that the full transparency of the assets and accounts which comprise the estates of Mr GSH and Mdm LBK should be made known to this court;

(b) this is to enable the plaintiff to complete his cross-examination of the first defendant concerning all the assets and accounts which comprise the estates of Mr GSH and Mdm LBK; and

(c) the court must have knowledge of all the assets and accounts which comprise the estates of Mr GSH and Mdm LBK in order to enable the court to make an order for the appointment of a committee to manage all the assets and accounts which comprise the estates of Mr GSH and Mdm LBK

DEFENDANTS' SUBMISSIONS

[62] In praying that the plaintiff's application be dismissed with costs to be borne by the plaintiff, the defendants submitted as follows:

[63] There are essentially three sets of documents. These are as follows:

(a) documents pertaining to the Malaysian bank accounts which have been frozen;

(b) documents pertaining to the 'hidden' bank account; and

(c) documents relating to the estate of Mdm LBK.

[64] With regard to documents the mentioned in sub-para (a) above, the first defendant has given copies of the latest statements of accounts to the plaintiff. Since these accounts have been frozen, the defendants take the position that there is no necessity to furnish to the plaintiff the statements from 2008 onwards as there is no activity in these bank accounts.

[65] With regard to the documents mentioned in sub-paras (b) and (c) above, the first defendant will only give these documents to the committee once it is set up. The reason is that there is a real concern and fear on the part of the defendants that this bank account, if revealed to the plaintiff, will be caused to be frozen by the plaintiff. This is because the plaintiff has caused the other accounts of Mr GSH to be frozen upon finding out the existence of the

other accounts. As a result of the plaintiff's alleged irresponsible actions, the defendants are unable to gain access to the funds in the other accounts in order to pay for their parents' upkeep.

[66] If this happens, the maintenance and upkeep of their parents in Australia will be affected as there will be no more funds forthcoming to finance the maintenance and upkeep of their parents in Australia.

[67] Thus, the defendants take the position that these documents must not be given to the plaintiff.

[68] Furthermore, the suit before the court is merely to set up a committee to manage the estates and the affairs of both their parents. It is not like other disputes. In this dispute between the plaintiff and the four defendants, all the parties are not in court to find fault with each other or to ascertain whether the assets of the estates of their parents have been taken care of in the proper manner prior to the formation of the committee.

[69] Hence, the parties should only be concerned about how to go about setting up the most suitable and appropriate committee for the care of their parents.

[70] Therefore, there is no reason for the plaintiff to go through these documents for the purpose of the litigation before the court.

[71] The plaintiff can cross-examine the first defendant on her management of the assets (including the funds) of both parents without the necessity of going into the particular details of the bank statements sought by the plaintiff in his application.

[72] Based on the answers given by the first defendant in her examination-in-chief, cross-examination and re-examination, this court can decide whether the first defendant is suitable to be appointed a member of the committee.

[73] In any event, if there is any impropriety on the part of any of the defendants relating to the management of the assets of the estates of their parents, the committee, when formed, can look into this matter and take the necessary action against any of the defendants, if the committee feels that there is a need to do so.

A DECISION OF THE COURT

[74] On 7 August 2014, after having considered the submissions of the parties and the facts and circumstances of this case, the court granted order in terms of the plaintiff's application.

B

[75] Being dissatisfied with the decision of the court, the defendants have filed a notice of appeal on 5 September 2014 to the Court of Appeal against the decision of the court.

C REASONS FOR THE DECISION OF THE COURT

[76] The reasons why the court decided in that manner are as follows:

D **[77]** The court agreed with and accepted the submissions of Mr Philip Chai, learned counsel for the plaintiff that the application ought to be allowed for the reasons and the grounds relied upon by the plaintiff.

Mental Health Act 2001

E

[78] I shall firstly deal with the Mental Health Act (Act 615) ('the Act') and Mental Health Act s 58 of the Act. As stated in the preamble of the Act, it is an Act to consolidate the laws relating to mental disorder and to provide for the admission, detention, lodging, care, treatment, rehabilitation, control and
F protection of persons who are mentally disordered and for related matters. The Act was passed by the Malaysian Parliament and it received the Royal Assent on 6 September 2001. On 27 September 2001, the Act was published in the gazette.

G **[79]** The Act came into force on 15 June 2010 (see PU (B) 269/2010).

[80] Section 2 of the Act defines the term 'mental disorder' to mean as follows:

H
> 'any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired; and 'mentally disordered' shall be construed accordingly'.

[81] Part X of the Act deals with 'Proceedings in inquiries into mental
I disorder'. Section 51 to 75 come under Part X of the Act.

[82] Section 51 defines the term 'court' for purposes of Part X of the Act to mean as follows:

> 'the High Court'.

[83] The same section also defines the term 'mentally disordered person' to mean as follows:

> 'any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs.'

[84] The court notes that this definition does not state that 'a mentally disordered person' is 'any person found in accordance with the provisions of the Act to be mentally disordered and incapable of managing himself and his affairs'.

[85] Under s 52 (1) of the Act, the court may, on an application made before it, make an order directing an inquiry to determine whether a person subject to the jurisdiction of the court and alleged to be mentally disordered is incapable of managing himself and his affairs due to such mental disorder.

[86] Under s 52 (2) of the Act, the order of the court may also contain directions for inquiries to be made concerning the following matters:

(a) the nature of the property belonging to the person alleged to be mentally disordered;

(b) the persons who are his relatives;

(c) the period during which he has been mentally disordered; or

(d) such other questions as the court deems fit.

[87] Under s 52 (3) of the Act, the application for such an inquiry may be made by a relative of the person alleged to be mentally disordered, or by any public officer nominated by the Minister for the purpose of making the application.

[88] Under s 53 (1) of the Act, the court shall give reasonable notice to the person alleged to be mentally disordered and the applicant of the time and place fixed for the inquiry.

[89] Under s 53 (2) of the Act, where it appears to the court that the person alleged to be mentally disordered is in such a state that personal service on him of the notice would be ineffectual, the court may, for the purpose of bringing the person to the inquiry, direct that the service of the notice be made on the person having charge of him or on any adult person or the owner or occupier of the premises wherein the mentally disordered person lives.

[90] Under s 54 (1), at any time after the application for the inquiry is made, the court has the power to require the applicant to produce the person alleged

to be mentally disordered at such time and place as the court may appoint to be personally examined by the court or by a psychiatrist from whom the court may desire to have a report of his mental capacity and condition. The court may also make an order authorising any person or persons named in the order to have access to the person alleged to be mentally disordered for the purpose of a personal examination and the making of the report by the psychiatrist.

[91] Under s 54 (2) of the Act, the psychiatrist making the report shall consider the following matters:

(a) the nature and degree of the person's condition;

(b) the complexity of his estate;

(c) the effect of the condition of the person upon his conduct in administering his estate; and

(d) any other circumstances the psychiatrist considers relevant to the estate and the person and his condition.

[92] Under s 54 (3) of the Act, the report referred to in para (1) (a) shall be admissible in evidence at the inquiry to be held by the court under Part X.

[93] Under s 55 (1), the court may, in lieu of or in addition to its powers under s 54, and on such evidence as it deems sufficient, make an order that the person alleged to be mentally disordered be admitted into a government psychiatric hospital or a gazetted private psychiatric hospital for observation for a period not exceeding one month; and the court may on subsequent application by the medical director order an extension for a further period of observation not exceeding one month.

[94] Under s 55 (2), the order of the court shall also provide that if the person concerned is certified prior to the expiry of the period of observation to be not mentally disordered, the person shall be discharged by the medical director into the care of the person making the application under sub-s 52 (3) and shall appear before the court at the time and place appointed by the court.

[95] Under s 55 (3), upon the admission of the person concerned to the psychiatric hospital under sub-s 55 (1), the medical director shall keep the person under observation and shall, before the expiry of the period mentioned in the order, certify in writing to the court his opinion as to the state of mind of the person.

[96] Under s 55 (4), in making his certification under sub-s 55 (3) the medical director shall consider the matters set out in sub-s 54 (2).

[97] Under s 55 (5), the certificate under sub-s 55 (3) shall be admissible in evidence at the inquiry to be held by the court under Part X.

[98] Under s 55 (6), if, at any time after certification, the person is or becomes mentally disordered, the applicant under sub-s 52 (3) under whose care the person is placed upon being discharged under sub-s 55 (2) shall ensure that the person appears before the court at the time and place appointed by the court.

[99] Under s 56, at the inquiry, after receiving the report under s 54 or the certification of the medical director under s 54 and upon hearing such evidence and arguments as it may think fit, the court shall decide whether the person alleged to be mentally disordered is, due to his mental disorder, incapable of managing himself and his affairs, and shall also decide any other questions as to which an inquiry has been directed.

[100] Under s 57, the court may make such order as to the costs of the inquiry and may include in the order such remuneration to any medical officer or registered medical practitioner as the court deems reasonable but no order for the payment of costs shall be made against the Minister or against any public officer nominated by the Minister under sub-s 52 (3).

[101] Section 58 (1) of the Act provides that if the court finds that the person who is alleged to be mentally disordered is incapable of managing himself and his affairs due to his mental disorder, the court may appoint a committee or committees of the person and of the estate of the person and may, as the court deems fit, make an order either as to the remuneration, if any, of the committee or committees out of the person's estate or as to the giving of security by the committee or committees.

[102] The court notes that in the instant case, the application of the plaintiff is only for an order of the court for the appointment of a committee of the estate of Mr GSH and the estate of Mdm LBK. There is no application for the appointment of committees of the persons of Mr GSH and Mdm LBK.

[103] Section 58 (2) of the Act provides that where the court finds that the person alleged to be mentally disordered is incapable of managing his affairs due to his mental disorder but is not dangerous to himself or to others, the court may appoint a committee of his estate without appointing a committee of his person.

[104] Section 58 reads as follows:

Appointment of committees

A 58. (1) If the Court finds that the person who is alleged to be mentally disordered is incapable of managing himself and his affairs due to his mental disorder, the Court may appoint a committee or committees of the person and of the estate of the person and may, as the Court deems fit, make an order—

B (a) as to the remuneration, if any, of the committee or committees out of the person's estate; or

(b) as to the giving of security by the committee or committees.

(2) Where the Court finds that the person alleged to be mentally disordered is incapable of managing his affairs due to his mental disorder but is not dangerous to C himself or to others, the Court may appoint a committee of his estate without appointing a committee of his person.

[105] Under s 59 (1) of the Act read together with s 51 of the Act, the court may, on the appointment of a committee of the estate of a mentally disordered D person, direct by the appointment or by any subsequent order that the person to whom the charge of the estate is committed shall have such powers for the management of the estate as the court deems necessary and proper, regard being had to the nature of the property, whether movable or immovable, of which the estate may consist. E

[106] Under s 59 (2) of the Act, it is expressly stated that the powers of management conferred under sub-s (1) shall not extend to the sale or charge of the estate or any part of the estate or to the letting of any immovable property F for a term exceeding three years.

[107] Section 59 reads as follows:

Powers of management of estate of mentally disordered person

G 59. (1) Subject to subsection (2), the Court may, on the appointment of a committee of the estate of a mentally disordered person, direct by the appointment or by any subsequent order that the person to whom the charge of the estate is committed shall have such powers for the management of the estate as the Court deems necessary and proper, regard being had to the nature of the property, whether movable or immovable, of which the estate may consist. H

(2) The powers of management conferred under subsection (1) shall not extend to the sale or charge of the estate or any part of the estate or to the letting of any immovable property for a term exceeding three years.

I **[108]** Section 69 of the Act concerns the power of the court to order a fit and proper person to transfer stock, securities, etc, of a mentally disordered person which are held by a committee of the estate of the mentally disordered person or a trustee for him and the committee or trustee dies intestate or himself becomes mentally disordered or is out of the jurisdiction of the court, etc.

[109] In my considered view, this section is inapplicable to the facts and circumstances of the instant case because there is no trustee or committee of the Malaysian estates of Mr GSH and Mdm LBK appointed yet by the court.

[110] Section 70 concerns the transfer of property of a mentally disordered person residing outside Malaysia. Under this section if there is any property situated in Malaysia which is standing in the name of or vested in any person residing outside Malaysia and the court is satisfied that the person has been declared to be a mentally disordered person and that his personal estate has been vested in a committee, curator or manager according to the laws of the place where he is residing, the court may order a fit and proper person to make such transfer of the property or any part of the property to the committee, curator or manager or otherwise, and also to receive and pay over any proceeds or profits of the property as the court deems fit and any act done in pursuance of the order shall be valid and effectual for all purposes.

[111] In my considered view, this section can be utilised to enable the court to order that the personal property of Mr GSH in Malaysia be transferred to a committee, curator or manager in Australia or the proceeds or profits from the sale of that property be paid over to the committee, curator or manager in Australia, if his personal estate is vested in a committee, curator or manager in Australia. This is because based on the evidence so far and the statement of agreed facts filed by both the parties, their parents, namely, Mr GSH and Mdm LBK are mentally disabled and the public trustee in Queensland is the administrator of the Australian estate of Mr GSH.

[112] Section 71 concerns the power of the court to order that the property, if money, or, if of any other description, the produce thereof when realised, be paid to such person as the court may deem fit to appoint to be applied for the maintenance of the mentally disordered person and his family ie his wife and children, in a direct and inexpensive manner, and all payments so made shall be a good discharge to the person making the payment, instead of appointing a committee of the estate.

[113] In my considered view, at the conclusion of the trial of this case, this court has to consider whether this section can be utilised in the instant case. This is because of the following reasons:

(a) the express provision in s 58 (1) concerning the finding by the court after having conducted an inquiry in accordance with the provisions of the Act that a person is incapable of managing himself and his affairs because of his alleged mental disorder;

A (b) the express provision in s 56 which requires the court to decide after having conducted an inquiry whether the person is incapable of managing himself and his affairs due to his mental disorder; and

(c) the express provision in s 52 (1) for the court to order an inquiry to determine whether a person subject to the jurisdiction of the court and alleged to be mentally disordered is incapable of managing himself and his affairs.

[114] In my considered view, this court will have to determine at the conclusion of the trial whether this court has the power to appoint committees of the Malaysian estates of Mr GSH and Mdm LBK under s 58 of the Act when both of them are not subject to the jurisdiction of the court as they are no longer residing in Malaysia and no inquiry has been held by this court in accordance with the provisions of the Act as mentioned above, to enable this court to decide whether they are in fact incapable of managing themselves and their affairs because of mental disorders.

[115] The court notes that so far the parties in the instant case have proceeded with the full trial on the basis that this court has the power to appoint committees of the Malaysian estates of Mr GSH and Mdm LBK under s 58 of the Act because they are mentally disabled and there are assets in Malaysia belonging to them which can be used to finance their daily expenses and other expenditure for their welfare and upkeep in Australia where they reside with the second defendant.

[116] Section 73 concerns the power of the court to make an order for the reception of a mentally disordered person by a government psychiatric hospital or a gazetted private psychiatric hospital as an involuntary patient or by a friend or a relative of the mentally disordered person in a case where the court does not appoint a committee of his person.

Discovery, production and inspection of documents under the RC 2012

[117] I shall next deal with the law relating to discovery, production and inspection of documents as set out in the RC 2012.

[118] The relevant provisions in the RC 2012 which are applicable to the facts and circumstances in the instant case are rr 3, 6, 8, 8a, 10, 11(1) , 13 and 16 of O 24 of the Rules of Court 2012 which reads as follows:

> Order for discovery (O. 24 r. 3)
>
> 3. (1) Subject to the provisions of this rule and of rules 4 and 8, the Court may at any time order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to give discovery by making and serving on any other party

a list of the documents which are or have been in his possession, custody or power and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) (There is no paragraph (2)).

(3) (There is no paragraph (3)).

(4) The documents which a party to a cause or matter may be ordered to discover under paragraph (1) are as follows:

(a) the documents on which the party relies or will rely; and

(b) the documents which could

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case.

...

Defendant entitled to copy of co-defendant's list (O 24 r 6)

6. (1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required in accordance with paragraph (1) to supply a copy of a list of documents shall supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons, the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule, 'list of documents' includes an affidavit verifying a list of documents.

Discovery to be ordered only if necessary (O 24 r 8)

8. On the hearing of an application for an order under rule 3, 7 or 7A, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or adjourn the application and shall in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Duty to discover continues throughout proceedings (O 24 r 8A)

8A. After the making of any order under rule 3 or 7, the party required to give discovery under any such order shall remain under a duty to continue to give discovery of all documents falling within the ambit of such order until the proceedings in which the order was made are concluded.

...

Inspection of documents referred to in pleadings and affidavits (O 24 r 10)

10. (1) Any party to a cause or matter shall be entitled at any time to serve a notice in Form 41 on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies of that document.

(2) The party on whom a notice is served under paragraph (1) must, within four days after service of the notice, serve on the party giving the notice, a notice in Form 42 stating a time within seven days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which of the documents he objects to produce and on what ground.

...

Order for production for inspection (O 24 r 11)

11. (1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1)

(a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2);

(b) objects to produce any document for inspection; or

(c) offers to inspect at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there, then, subject to rule 13(1), the Court may, on the application of the party entitled to inspect, make an order in Form 43 for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

...

Production to be ordered only if necessary (O 24 r 13)

13. (1) An order for the production of any documents for inspection or to the Court shall not be made under any of the foregoing rules unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court, privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

...

Failure to comply with requirement for discovery (O 24 r 16)

16. (1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case

of a failure to comply with any such provision, to rule 11(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) (There is no paragraph (2))

(3) (There is no paragraph (3))

(4) (There is no paragraph (4))

(5) A party who is required by any rule in this Order, or by any order made thereunder, to make a discovery of documents or to produce any document for the purpose of inspection or any other purpose, but who fails to comply with any provision of that rule or with that order, as the case may be, may not rely on those documents save with the leave of the Court.'

[119] It is trite that under O 24 r 3 (1) of the Rules of Court 2012, the court has a wide discretion, which may be exercised, subject to rr 4 and 8 of the same Order, at any time, order any party to a cause or matter to give discovery by making and serving on any other party a list of the documents which are or have been in his possession, custody or power and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

[120] Rule 3 (4) of the RC 2012 expressly provides that the documents which a party to a cause or matter may be ordered to discover under para (1) are as follows:

(a) the documents on which the party relies or will rely; and

(b) the documents which could

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case.

[121] Hence, it is clear that the party who is seeking an order for discovery of documents has to demonstrate to the court that the document relates to any matter in question in the cause or matter and that the document falls within any one of the four prescribed descriptions of documents caught by the rule.

[122] The first description as set out in sub-para (a) of r 3 (4) of O 24 is a document on which the party making the application for discovery relies on or will rely on.

[123] The second description as set out in sub-para (b) (i) of r 3 (4) of O 24 is a document which can adversely affect his own case.

[124] The third description as set out in sub-para (b) (ii) of r 3 (4) of O 24 is a document which can adversely affect another party's case.

[125] The fourth description as set out in sub-para (b) (iii) of r 3 (4) of O 24 is a document which can support another party's case.

[126] In my judgment, firstly, the documents the discovery and inspection of which are being sought by the plaintiff in encl (80) are in the possession, custody and/or power of the first defendant. This is because there is no dispute that the first defendant is the person who is managing the assets and financial affairs of Mr GSH and Mdm LBK in Malaysia and that other than the documents which have been alleged by the first defendant to have been redirected to the plaintiff's address in Australia, all letters, documents and correspondences and statements of accounts in relation to the assets of Mr GSH and Mdm LBK in Malaysia are sent to No 12, Jalan Kovil Hilir, Sentul 55100 Kuala Lumpur which is their correspondence address and the first defendant's residential address.

[127] Secondly, in my judgment, the documents, the discovery and inspection of which are being sought by the plaintiff in encl (80), fall easily within any two of the four descriptions of documents which are prescribed in sub-paras (a) and (b) (ii) of r 3 (4) of O 24. This is because, the plaintiff is seeking to ascertain whether he can either rely on the documents to support his case or he can rely on the documents to adversely affect the first defendant's case and the second to the third defendants' case as mentioned above.

[128] The court shall order discovery of documents only if necessary. This is because r 8 of O 24 provides that on the hearing of an application for discovery under, inter alia, r 3 the court, may dismiss or adjourn the application and shall in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

[129] The court notes that the paramount concern of all the parties in the instant case is about the proper care and upkeep of their parents who are mentally disabled. The parties, in general, and the plaintiff, in particular, have also voiced their concern that the assets of their parents in Malaysia be not dissipated and should be identified and utilised properly for their parents' welfare and upkeep until they live out the rest of their natural lives.

[130] In my judgment, since the Australian estate of Mr GSH has been fully

utilised to finance his and Mdm LBK's daily expenses and other expenditures, all of which have been approved by the public trustee in Queensland, Australia, and the plaintiff and defendants have to rely on the Malaysian estates of Mr GSH and Mdm LBK to finance his and Mdm LBK's daily expenses and other expenditures, the discovery of the documents which is being sought by the plaintiff is necessary because the list of documents will shed light on the nature, amount and value of all the existing assets of the Malaysian estate of Mr GSH and Mdm LBK.

[131] In my opinion, in the instant case, having taken into consideration the undisputed fact that it is common ground between the plaintiff and the defendants that their parents are mentally disabled, that their parents have assets in Malaysia in their single names or in their joint names with either the plaintiff or any one or more of the defendants and that it is imperative that a committee be set up pursuant to s 58 of the Mental Health Act 2001 to manage the welfare, affairs (which include financial or otherwise) and the respective estates of their parents in Malaysia, the order for the discovery of the documents sought by the plaintiff from the first defendant is necessary for disposing fairly of the cause or matter and for the saving of costs.

[132] Before, the court decides on the composition of the Committee to be set up to manage the affairs and the estates of Mr GSH and Mdm LBK in Malaysia, all the parties before the court must identify and disclose to the court all the assets of Mr GSH and Mdm LBK in Malaysia which will be entrusted to the committee to manage. How else, will the court be able to decide whether an outsider ought to be appointed to the committee, and if he is to be appointed to the committee, what are his duties and powers and what is the amount of remuneration to be paid to him?

[133] The court will also need to be appraised of the past history, if any, of the manner in which the plaintiff and each of the defendants have dealt with the assets of Mr GSH and Mdm LBK in Malaysia and with each other concerning the management of the assets in Malaysia and also the management of the care and welfare of Mr GSH and Mdm LBK either in Malaysia or Australia or both. All these matters are relevant in the determination of the composition of the committee to be set up pursuant to s 58 of the Mental Health Act 2001.

[134] In my judgment, r 10 (1) of O 24 is applicable to entitle the plaintiff to serve on the first respondent a notice in Form 41 to require the first defendant to produce the documents for the 'hidden account' for his inspection and to permit him to take copies of those documents since these documents have been mentioned in the defendants' pleading ie amended defence and counterclaim, and also by the first defendant in her affidavit in reply to resist and oppose the plaintiff's application at encl (80).

[135] As the first defendant has objected to the production of the documents for the 'hidden account' for the plaintiff's inspection, the plaintiff acted correctly by applying to this court under r 11 of O 24 for the production of those documents by the first defendant for the inspection and the taking of copies thereof by the plaintiff.

[136] Rule 11 (1) (b) of O 24 provides, inter alia, that the court may, on the application of the party entitled to inspect documents, make an order in Form 43, in favour of the party entitled to inspect documents, against a party who is served with a notice under r 10 (1) of O 24 to produce documents but who objects to produce the documents for inspection, for the production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit, subject to r 13 (1).

[137] In my considered view, it is clear from r 13 (1) of O 24 that the court shall only exercise its wide discretion in favour of the production of any document for inspection by an applicant if the court is of the opinion that the order for its production and inspection is necessary either for disposing fairly of the cause or matter or for saving costs.

[138] Rule 13 (2) of O 24 also provides that in the event, privilege from such production of the document is claimed (which is not applicable in the instant case) or there is an objection to the production of the document by the person having possession, custody and/or power over the document (which is applicable here), the court may inspect the document for the purpose of deciding whether the claim or objection is valid.

[139] In my judgment, the order for the production of the documents for the 'hidden account' are necessary either for disposing fairly of the cause or matter or for saving costs based on the facts and circumstances of this case and for the reasons set out above.

[140] In the instant case, before granting order in terms of the plaintiff's application, the court did not exercise its discretion to inspect any of the documents sought by the plaintiff to be produced by her for the plaintiff's inspection and to the court for the purposes of the cross-examination of the first defendant by the plaintiff in relation to the documents mentioned in the plaintiff's application. This is because firstly, there was no request from the first defendant to that effect.

[141] Secondly, from the description of the documents of which discovery and inspection have been sought by the plaintiff for the purposes of the continuation of the cross-examination of the first defendant by the plaintiff, the court was of the opinion that there was no necessity for the court to make

such an inspection as the documents mentioned in the plaintiff's application were either bank statements or statements from the 'Bursa Saham Malaysia' in Malay or the Malaysian Stock Exchange in English, etc, in relation to assets held either in the sole name of Mr GSH or in the joint names of Mr GSH, the first defendant and the third defendant.

CONCLUSION

[142] In my judgment, there must be full disclosure of all the documents relating to the assets and accounts which comprise the Malaysian estates of Mr GSH and Mdm LBK in order to enable the plaintiff to complete his cross-examination of the first defendant concerning the nature, amount and value of all the assets and accounts of Mr GSH and Mdm LBK which comprise their estates in Malaysia and in order to enable the court to decide whether to appoint a committee and if so, who are the persons who ought to be appointed to the committee, to manage the Malaysian estates of Mr GSH and Mdm LBK.

[143] It will also assist the court to decide whether to appoint a person or persons who the court deems fit to transfer the Malaysian assets of Mr GSH and Mdm LBK to the public trustee in Queensland, Australia for payment to the second defendant or any other person including the plaintiff or trustee or committees in Australia who are the committees of the persons of Mr GSH and Mdm LBK in Australia for the welfare and upkeep of Mr GSH and Mdm LBK in Australia or to sell the Malaysian assets and to receive the proceeds from the sale thereof and to pay them to the public trustee in Queensland, Australia for payment to the second defendant or any other person including the plaintiff or trustee or committees in Australia who are the committees of the persons of Mr GSH and Mdm LBK in Australia for the welfare and upkeep of Mr GSH and Mdm LBK in Australia.

[144] On 15 October 2014, when the case was called up for case management in order for the court to inform all parties that I have received a written directive from Azahar bin Mohamad FCJ, the Managing Judge of the Civil Division of the Kuala Lumpur High Court ('the MJ'), to dispose of all OCVC cases in this court before the end of this year, in line with a previous oral directive to that effect, the court was informed by Mr Philip Chai, the plaintiffs learned counsel, that the first defendant has yet to comply with the order for discovery and inspection which was granted by this court on 7 August 2014.

[145] This court notes that on 7 August 2014, after granting order in terms of the plaintiff's application at encl (80), the court had fixed 17 and 18 November 2014 for the continuation of the full trial of the matter. This court also notes that the cross-examination of the defendants' last witness who is the first defendant herself (DW4) is half way through and has not been completed yet.

A According to the plaintiff, he needs to inspect the documents before he can complete his cross-examination of DW4.

[146] However, Mr Syahredzan Johan, the first defendant's learned counsel, informed the court on 15 October 2014, that a copy of the sealed order of the court has not been served on the first defendant. Hence, the first defendant is waiting for the service of a copy of the sealed order on her before deciding whether to comply with the order of the court or to file an application for a stay of the order of the court on the ground that she is concerned that the plaintiff will cause the 'hidden account' to be frozen if she complies with the order of the court and allows the plaintiff to inspect and obtain copies of the bank statements of the 'hidden account'.

[147] Mr Philip Chai informed the court that he has received the copy of the draft order which has been approved by the court that morning and he will extract a copy of the sealed order the next day. He also informed the court that the plaintiff will initiate committal proceedings against the first defendant in the event that the first defendant fails to comply with the order of the court dated 7 August 2014 for discovery and inspection of the documents sought by the plaintiff.

[148] This court notes that in the event the first defendant fails to comply with the order of the court for discovery and inspection of the documents, the court has the power under O 24 r 16 (1) of the RC 2012 to order that the amended defence and counterclaim of the first defendant be struck out with costs and judgment be entered, accordingly, against her in favour of the plaintiff.

[149] On 15 October 2014, the court directed all parties to give their fullest cooperation to the court to ensure that the full trial of the matter will be concluded on or before 18 November 2014 in order to enable this court to comply with the written directive of the MJ to dispose of all OCVC cases which are still pending disposal in this court including this case before the end of this year.

[150] This court notes that the MJ has been very kind to extend the dateline for the completion of all OCVC cases from the end of last year ie 2013, to the end of this year ie 2014, in order to give ample time to the parties to complete the full trial of this case before the end of this year and to enable the court to dispose of this case before the end of this year.

Application allowed.

Reported by Ashok Kumar